

## **Conceptualizations of Constitutionalism in Recent China's Debates: Preliminary Typologies**

For many reasons, the lack of complete freedom of speech in China did not stop a wide range of schools of thought, ideologies and social and political doctrines from developing in China. According to He Li's position, some significant intellectual threads such as Liberalism, Neo-Authoritarianism, New Left, Democratic Socialism and New Confucianism have emerged (2015; see also e.g. Frenkiel, 2015). Each of them provides a different vision of a political system desirable for China. From the China's governing elite perspective, this relative pluralism of visions of political system is just as desirable as potentially destructive. That can be perfectly seen in the current mode of governance, where the need of experimenting and searching for new ideas on governance (including ideas regarding the form of official ideology) involves the risk that it may potentially lead to overthrowing of the ruling party. In fact, the role and significance of CCP's vision of political system and ideologies linked to them, does not exclude the possibility of searching for, and experimenting with unorthodox sources (due to the economic requirements, international commitments, situational necessities etc.). On the one hand, the eclectic and 'open' nature of the official political ideology which developed after 1978 provides relative flexibility, and on the other hand, it does not lead to the development of a coherent and stable ideological and axiological 'guidance' (Benedikter, 2014, p. 2). This is the perfect example of China's political practice known as 'guerrilla policy style' (Heilmann & Perry 2011, pp. 12–13, 23).

With that in mind, let's focus on current debates among the Chinese intellectuals on constitutionalism, or the so called constitutional rule (xianzheng 宪政). For a long time, the role of the term xianzheng was rather marginal, though the term itself, along with the vision of political reforms

related to it, was present in the debates on China's modernization since the late nineteenth century. Since 1978, other concepts, next to the official ones, dominated the narrative of the reforms (democracy, rule of law, human rights etc.). In the first and second decade of the twenty-first century, the idea of *xianzheng* became increasingly popular. A vibrant debate on that issue has developed, in which it is possible to distinguish three broad schools of thought: Liberal, Socialistic (or Sinized Marxist) and Confucian Constitutionalism (see e.g. Peng Chengyi, 2011b, 2011a, 2013).

This revival of interest in constitutionalism can be partly explained by the fact that in the 40s even Mao Zedong (albeit for a short period of time) was using the term (e.g. in the famous essay *New Democratic Constitutionalism* 新民主主义的宪政). This is a potential source of legitimacy for proponents of constitutionalism. Moreover, it is of great importance that in the PRC there is a rich constitutional tradition one might accommodate into the narrative of *xianzheng*. This conception never carried the negative connotations shaped in an earlier debate. Because the 'political' potential of *xianzheng* had not been definitively determined, it became easily adjustable to broader visions of the social and political system.

The aim of this paper is to make a contribution to the study on contemporary Chinese discourse on *xianzheng*. This time, I focus only on the ways in which the Chinese authors understood constitutionalism. A general hypothesis is that there are substantial differences between the proponents and the critics in the understanding of constitutionalism and the way it is framed. The subject of this pilot study are the selected articles of the Chinese authors about constitutionalism. This paper will focus on the articles, which had the biggest and the most meaningful impact on China's intellectual scene, published in 2013 during the intense debate on *xianzheng* that took place that year. I discuss three articles supporting constitutionalism (The Chinese Dream: A Dream of Constitutionalism and works of Wang Jianxun and Zhang Qianfan) and four critical works (by Yu Zhong, Yang Xiaoqing, Zhengzhi Xue, Wang Tingyou). However, reflections on a broader context and detailed description of the 2013' debate will be kept to a minimum, as it has already been discussed extensively by other authors (see Yuen, 2013; Creemers, 2015).

## 1. Understandings of Constitutionalism

The heated debate of 2013 resulted in a flood of works on *xianzheng*. In fact, a wide range of works represent competing approaches, contradictory viewpoints and fundamental differences in the understanding of the term 'constitutionalism'. Table 1 illustrates the definitions and main ele-

Table 1

Author, title	Definitions/understandings of <i>xianzheng</i>
<i>The Chinese Dream: A Dream of Constitutionalism</i> (中国梦, 宪政梦) (2013)	The author treats constitutionalism as a broad social and political project, though he refrains from defining the term itself. He also highlights the direct link between <i>xianzheng</i> and freedom – ‘Chinese people should be free, Chinese dream is the dream of <i>xianzheng</i> ’ (中国人本应就是自由人, 中国梦本应就是宪政梦).
Wang Jianxun (王建勋), <i>My view on Constitutionalism</i> (宪政之我见) (2013)	‘ <i>Xianzheng</i> is a kind of institutional and ideological concept of government limitations and protection of fundamental rights and freedoms of the individual’ (宪政是一种限制政府权力, 保护个人基本权利和自由的制度安排和思想观念).
Zhang Qianfan (张千帆), <i>Implementing the Constitution and Long Term Governance</i> (宪法实施与长期执政) (2013)	‘ <i>Xianzheng</i> means implementing the Constitution and limiting the political power effectively’ (宪政就是宪法获得实施并有效约束政治权力的一种状态).
Yu Zhong (喻中), <i>There is no one Path for Reform</i> (改革的路径不可能是单一的) (2013)	By asking ‘what <i>xianzheng</i> really is’ (那么, 宪政又是什么呢?), the author describes its three elements: ‘freedom, democracy and human rights’ (自由, 民主, 人权).
Yang Xiaoqing (杨晓青), <i>Comparative Study on Constitutionalism and People's Democracy</i> (宪政与人民民主制度之比较研究) (2013)	Author believes that <i>xianzheng</i> comprises of: market economy, private property, multi-party parliamentary system, separation of powers (which serves to protect the people against the excesses of government), an independent judiciary and the army, which is politically neutral and controlled by the civilian sector.
Zhengzhi Xue (郑志学), <i>A Correct Understanding of “Constitutionalism”</i> (认清“宪政”的本质) (2013)	From the very beginning of his work, Zhengzhi Xue links <i>xianzheng</i> to ‘the bourgeois constitution’ (资产阶级宪法). The author believes that ‘ <i>xianzheng</i> ’ is a central concept that reflects the capitalist economy, political theory and practice’ (‘宪政’就是反映资产阶级经济政治理论与实践的核心概念). It consists of: separation of powers, judicial independence, the existence of constitutional judiciary, a multi-party system, ‘parliamentary budgeting’, ‘government with limited responsibilities’, free market economy and universal values – freedom, democracy, rule of law, human rights, and finally, the nationalization of the army.
Wang Tingyou (汪亭友), <i>Views On Constitutionalism</i> (对宪政问题的一些看法) (2013)	The author uses the term ‘Western capitalist <i>xianzheng</i> ’ (西方资本主义的宪政). Constitutionalism is associated with a particular social and economic order and culture circle. <i>Xianzheng</i> comprises of: ‘separation of powers, democracy, rule of law, limitation of power through constitutional and legal system, protection of the fundamental civil rights’ (分权、民主、法治, 以宪法法律体系约束政府权力, 保障公民的基本权利).

ments of the presented approaches. Both the proponents (the first three papers in the table) as well as the critics (four other articles) conceptualized the idea of xianzheng differently. Both sides refer to the opposing meanings of the term 'constitutionalism.' As a result, the debate is asymmetrical and thus, it becomes inconclusive. Basing on the Chinese writings on xianzheng, three typologies might be proposed in order to identify the basic differences in the conceptualization of xianzheng. Remembering that these are only preliminary findings, let's take a look at each of the typologies.

### **1.1. Criterion of how the term xianzheng is specified**

The main problem with all the works engaged in the debate on xianzheng are the significant differences in determining the necessary elements of constitutionalism. There is much controversy amongst the scholars over whether the distinctive features of xianzheng should be defined in a general or in a more detailed way. Therefore, we can distinguish a general and 'concrete' (identifying a number of more specific elements) understanding of this term.

The advocates of constitutionalism tend to define it in a general way, using a broad category of 'limiting the political power.' According to Wang Jianxun, constitutionalism is a concept relating primarily to limiting the government and promoting 'fundamental rights and freedoms of the individual.' Similarly, Zhang Qianfan believes that xianzheng functions when the Constitution is implemented and when it actually limits the political power.

Such a general understanding of xianzheng means that it cannot be reduced to a one catalogue of specific elements. Thus, xianzheng appears to be a general guideline for ruling, and only on such a general level it can be considered as universal. In this approach, constitutionalism is a very broad term and its empirical exemplifications may be very different. Moreover, it opens a door for adapting the idea of 'limiting the political power' to the existing local conditions. Also, a general understanding of xianzheng stimulates the discussion on specific alternatives to China's political system.

The critics of xianzheng, conversely, prefer a 'concrete' way of understanding xianzheng. They perceive constitutionalism as a peculiar model of society, which can be reduced to a set of various elements. Each of the cited authors propose a different catalogue of these elements (as shown in Table 1). Obviously, the main question is how were they selecting specific elements constituting xianzheng, but there is no reflection on this

in their writings. It is worth noting that all the elements they mentioned, refer to the different levels of organization of social life. Some of them are not even commonly associated with constitutionalism ('nationalization of the army', 'government with limited responsibilities'). What is even more interesting, one of the two most common elements among all the definitions is democracy (multi-party system), which is not mentioned at all in any of the definitions presented by the advocates of xianzheng.

Treating constitutionalism as a very wide package of various elements has multiple consequences. This makes the copying of constitutionalism (or its comprehensive implementation) basically impossible to achieve. With so many complex and diverse elements present in the concept of xianzheng, it is not feasible to copy, nor to implement it in China anytime soon. Also, a consensus among scholars on all the necessary elements is difficult to reach. Increasing the number of elements constituting xianzheng leaves much less room for further debate on this topic.

## 1.2. Criterion of *genus proximus*

Next factor differentiating the understanding of xianzheng among the aforementioned authors, refers to the *genus proximum* used in its definitions. From this perspective, idea-centric and empirical approach can be distinguished. According to the first one, constitutionalism is a kind of a doctrine or ideology, concerning the standards of exercising the political power. However, according to the empirical approaches, xianzheng is a kind of a social praxis, a way of governing, a generalization of what really happens in the institutional realm.

Advocates of xianzheng employ the idea-centric understanding of this term. Constitutionalism is a general conception oriented towards the limitation of the political power. Hence, xianzheng is not linked to specific solutions and examples and, as a general concept, it may be implemented in many different ways. Xianzheng is a project that is universal only at the most general level. The Chinese Dream... argues that all the beautiful dreams require an institutional framework, which is to be provided by constitutionalism. According to that view, adapting common foundations to building a political system for all mankind, does not contradict the existence of 'particular' dreams. Thus, constitutionalism has been associated with a universal (but not necessarily Western) project, which can still keep its local shape and character.

Unlike the advocates of xianzheng, its critics focused on an understanding of constitutionalism closes to the empirical approaches. In contrast to their opponents, they see constitutionalism as a set of solu-

tions already existing in the West. The authors (with the exception of Zhong Yu) clearly overlooked the fact that the solutions implemented in the West are not homogeneous, but quite the contrary – they have many different forms and features. Yet, the empirical approach has another important implication – constitutionalism becomes a rigid set of solutions applied in other countries. As it already identifies specific examples of states and institutions, it is clear that constitutionalism cannot be treated as a political model adaptable in many different forms. Moreover, from this empirical perspective, the reflections on xianzheng concern the general social systems, and for this reason, they may be easily contrasted. In consequence, it is possible to employ the concept as a tool involved in struggles between civilizations (see papers of Yang Xiaoqing i Zhengzhi Xue).

### 1.3. Criterion of genesis

The next criterion differentiating presented understandings of xianzheng refers to its genesis. Some scholars consider ways of development of constitutionalism other than the Western ones, and accept the possibility of creating different political alternatives together with the presence of elements common to all forms of constitutionalism (the so called inclusive approach). On the other hand, the exclusive approach emphasizes the existence of a single form of constitutionalism, which is the one that was originally developed in the West (thesis of the genesis), and thus, constitutionalism is associated exclusively with the specific trajectory of the development of Western civilization (thesis of exclusivity).

The advocates of xianzheng refer to the inclusive approach. In Wang Jianxun's view, the Western achievements are only a source of inspiration rather than a model to copy. Similarly, Chinese Dream... mentions the Western ideas (including Anglo-Saxon constitutionalism) very broadly. The text does not encourage mindless imitation of the West, which has its own path of development. Instead, it focuses on building a 'new kind of civilization linking China and the West.' Zhang Qianfan develops a vision of 'socialist constitutionalism' based on implementing the constitution, which expresses the values promoted by the CCP. He states that xianzheng is not linked to capitalism, but is a kind of tool that can be used in various social and political systems, without undermining their distinctive features. Clearly, the increased emphasis on the existence of Chinese own resources related to constitutionalism is characteristic of Zhang Qianfan's vision. In this vision, nothing prevents constitutionalism from being developed in China on the basis of local resources (including

Sino-Marxism). It also means that introducing xianzheng into China is not equal to implementing a Western model of constitutionalism.

In turn, a number of scholars criticizing xianzheng support the exclusive approach (in a form of the thesis of genesis and the thesis of exclusivity). The opponents of xianzheng adapted the idea that there is only one single western constitutionalism. Hence, xianzheng is being perceived as genetically linked to capitalism and the West, but not to socialism and China's 'people's democracy.' From this point, although openly criticized, it is possible to copy western constitutionalism, but it is far more difficult to create an indigenous Chinese version of xianzheng. This also applies to so called 'socialist constitutionalism' (社会主义 宪政). Implementing constitutionalism symbolizes the rejection of China's own model, which is based on axiological foundations opposed to capitalism. Following its own path of development, China should not implement xianzheng. This view may be a side effect of a strategy, which favors maintaining the status quo, or an interesting and peculiar case of specific legal Auto-Orientalism (see Ruskola, 2002). Nevertheless, in the end the discussion on whether and in what form to adapt constitutionalism was reduced to the painful alternative – to implement western form of constitutionalism, or to follow China's own path?

## Summary

The analysis of the selected texts documenting a fierce polemic against and for constitutionalism among the Chinese intellectuals in 2013 proved that there are significant differences in the understanding of xianzheng on both sides of the debate. Both advocates and critics of constitutionalism considered this concept differently. The differences were related mainly to: (1) how far the distinctive features of constitutionalism are being specified, (2) what is genus proximum of its definitions, and last, (3) where did constitutionalism originate (the genesis). These major differences on how constitutionalism is conceptualized largely affect the direction and shape of Chinese intellectual discourse on xianzheng. In other words, each way of understanding and framing of xianzheng provides different starting point for further discussion. Its relevance for the process of forming a vision of reforms of the political system (with no freedom of speech) and developing social consciousness is undeniable (Jie Lu & Tianjian Shi, 2015).

To begin with, the advocates of constitutionalism express themselves strongly in favour of the general, idea-centric and inclusive approach.

This stimulates the discussion on different varieties of constitutionalism in China without the need for copying Western institutions. Furthermore, such understanding of xianzheng emphasizes its compatibility (or at least consistency) with the official political narrative, which greatly reduces the risk of discrediting it as a radical movement. To highlight non-confrontational side of xianzheng, authors made passing references to Xi Jinping's speech about the need of implementing the constitution, while emphasizing that referring to this concept does not challenge the power of the CCP, but quite the opposite.

On the other hand, the critics chose the 'specific', empirical and exclusive understanding of xianzheng, which supported the thesis that capitalism and the West in general are inextricably linked to constitutionalism. As a result, they distinguished two conflicting paths of development – Western and Chinese, openly suggesting a rivalry between them. Hence numerous references to military metaphors (that we can find in all the critical papers with an exception of Yu Zhong's work), which are indeed a classic element of the CCP's narrative, are probably used to inspire respect and obedience among citizens, as well as to create an atmosphere of mobilization (Link, 2013, pp. 251–252). Using military metaphors in relation to xianzheng also emphasizes the confrontational nature of the discussion in which constitutionalism proves to be unequivocally negative. Moreover, according to the critics of xianzheng, with all its negative consequences, constitutionalism could be potentially implemented in China in its Western form, but it absolutely cannot be brought to life in its Chinese variation. Such an approach inevitably leads to the conclusion that xianzheng is radical and potentially destructive to the current political system.

It is to be hoped that the analysis carried out in this paper will contribute to our understanding of the Chinese political thought concerning xianzheng and will enable a more complete understanding of the contemporary intellectual discourse, as well as help to assess, what are the future prospects for constitutionalism in China's political reforms.

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